

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 41 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WEALTH TAX

Versus

PRAMILABEN CHUNIBHAI

Appearance:

MR MANISH R BHATT for Petitioner

MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 01/09/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal has referred the following questions for the opinion of this Court under Section 27(1) of the Wealth Tax Act, 1957:-

- (1) "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been

justified in law in cancelling the order of the Commissioner of Wealth-tax made under Section 25(2) of the Wealth-tax Act, 1957?"

(2) "Whether, on the facts and in the circumstances of the case, the conclusion of the Appellate Tribunal in cancelling the order of the Commissioner of Wealth Tax made under Section 25(2) of the Act, is sustainable in law and from the material on record?"

(3) "Whether, the finding of the Appellate Tribunal that there was no factual information to show that the value of the property in question was much more than that returned by the assessee or at any rate estimated by the Wealth Tax Officer is correct in law and sustainable from the material on record?"

(4) "Whether, on the basis of the correct valuation method, the value of property in question was at all property returned by the assessee at Rs. 1,48,800 in her returns of wealth of the assessment years 1969-70 and 1970-71 and at Rs. 1,75,300 in her returns of wealth for the assessment years 1971-72 to 1973-74 and, if not, what will be the correct valuation of the property in question on the basis of appropriate valuation method?"

2. The assessee was the owner of a property used for self-occupation on the five relevant valuation dates, namely 31.3.1969, 31.3.1970, 31.3.1971, 31.3.1972 and 31.3.1973. The Wealth Tax Officer completed assessments for five years adopting values for the said property at Rs. 2,00,000, Rs. 2,00,000, Rs. 2,25,000, Rs. 2,40,000, and Rs. 2,50,000 respectively as against the values declared by the assessee at Rs. 1,48,800, Rs. 1,48,000, Rs. 1,75,300, Rs. 1,75,300 and Rs. 1,75,300. for the respective years.

3. The Commissioner of Wealth Tax, on perusal of the orders of the WTO, felt that the orders were erroneous in so far as they were prejudicial to the interest of the Revenue. According to the Commissioner, the WTO neither accepted the value declared in the return of wealth, nor adopted the value determined by the approved valuer, whose report was furnished by the assessee in support of the return. The WTO had estimated the value of the property without making any reference under Section 16A of the Wealth Tax Act, 1957 (hereinafter referred to as

"the Act") to the Departmental valuation officer. The Commissioner therefore, initiated proceedings under Section 25(2) of the said Act and issued notice to the assessee proposing revision of the assessment orders. According to the Commissioner, eventhough the approved valuer had shown the value of the property in question on the land and building method of over Rs. 4,05,600, the assessee had returned a much lower value for the property for all the years and even though the WTO had adopted the value of the property higher than the returned value and did not accept the value determined by the approved valuer, he did not make a reference to the Departmental Valuation officer under Section 16A of the Act. The Commissioner therefore, after hearing the assessee, set aside the assessment orders and directed the WTO to reframe the assessments adopting the correct value of the property after making a reference to the Departmental Valuation Officer under Section 16A of the Act.

4. The assessee preferred appeals to the Tribunal against the common orders made by the Commissioner and the Tribunal cancelled the orders of CWT by allowing the assessee's appeals. The Accountant Member and the Judicial Member dictated separate orders, which are described in the statement of case as "concurring orders". Paragraphs 4, 4A and 5 of the said order, contained the reasons and findings given by the Accountant Member, while paragraphs 8 to 16 contained the reasons and findings of the Judicial Member.

5. We have carefully gone through the separate orders of the Hon'ble Members of the Tribunal. In the order dictated by Shri V. Balasubramanian, Accountant Member, we find that he had expressed the following opinion on the points which were raised before the Tribunal.

- (i) The amount of Rs. 4,05,600 referred in to the valuation report relied upon by the assessee was only an intermediate figure and not the land and building method valuation;
- (ii) The valuation report was not shown to be wrong or unacceptable and that the valuer had adopted a scientific method of valuation of property;
- (iii) There was nothing to show that the valuation returned by the assessee is low at all. The WTO had adopted much higher valuation though the figure returned could not be said to be unreasonable, and the WTO should have in fact

accepted the returned figure;

- (iv) The Commissioner's view that it was obligatory on the part of the WTO whenever he does not accept the figure of valuation returned, to refer the matter to the District Valuation Officer, does not seem to be correct in face of the expression "may" used in Section 16A(1)(a) of the Act;
- (v) The direction of the CWT cannot remove the prejudicial aspect of the case and therefore, possibility of the Departmental valuer adopting lower valuation cannot be ruled out.

6. The Judicial Member in his separate order gave his findings to the following effect:-

- (i) The case clearly fell under Section 16A(1)(b)(i) of the Act, because the WTO enhanced the returned value by a figure exceeding Rs. 50,000 for the assessment years 1969-70, 1970-71, 1972-73 and 1973-74, while for the assessment year 1971-72, the case fell under Section 16A(1)(a) of the Act;
- (ii) The WTO ought to have referred the valuation to the Valuation Officer under Section 16A of the Act;
- (iii) It was not necessary for the Commissioner to record any firm or final finding as to prejudice, since he did not finally settle the assessment;
- (iv) Even the possibility that the Valuation Officer may, on reference of valuation by the WTO, choose to make an order under Section 16A(3) of the Act instead of making an order under Section 16A(5) of the Act and thereby reduce even the value adopted by the Wealth Tax Officer, would not detract from the Commissioner's order from the angle of the lower authorities' erroneous order being prejudicial to the interest of the Revenue;
- (v) Eventhough Rs. 4,05,600 did not reflect the value as per the land and building method, it caused no infirmity in the Commissioner's order because the Commissioner's grievance was that the matter was not referred by the WTO to the Departmental valuer under Section 16A of the Act;

(vi) The order of the Commissioner was upheld so far as assumption of revisional jurisdiction was concerned.

7. From the comparative chart of findings given by the learned Members of the Tribunal, we, with dismay, note that though the learned Judicial Member has purported to concur with the order of the learned Accountant Member on all the material points on which the findings are given by him he has clearly differed from the findings of the Accountant Member. We are therefore, surprised to find that the learned Judicial Member has, in his subsequent order, expressed that he had concurred with the order proposed by his learned brother. We fail to understand as to how the Tribunal has managed to achieve the same result with two sets of opposite findings of its two members. Perhaps, the Hon'ble Members have over-looked the fact that there is a clear statutory provision which enjoined a duty upon them to give findings on each point and if they differ on any finding on a point, they have to follow the course prescribed by law. Under Section 24(11) of the said Act, the provisions of sub-sections (1), (4) and (5) of Section 255 of the Income Tax Act have been incorporated by reference and it is provided that those provisions shall apply to the appellate Tribunal in the discharge of its function under the Wealth Tax Act, as they applied to it in the discharge of its functions under the Income Tax Act. Under Section 255 of the Income Tax Act, which lays down procedure of appellate Tribunal, it is provided by sub-section (4) as under:-

"If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it."

It is thus, clear that if the members of the Bench have any difference of opinion on any point, the point is required to be decided according to the opinion of the majority and when the members are equally divided,

as in the present case, they are required to state the point or the points on which they differ, and the case is required to be referred to the President of the Appellate Tribunal for hearing on such point or points by one or more of other members of the Appellate Tribunal and such points on which the members have differed, are to be decided according to the opinion of the majority of members of the Appellate Tribunal, who have heard the case, including those who have first heard it. It is therefore, clear that the process of reading a decision by the Tribunal is not complete where the opinions of two members are equally divided on any point and it is only after the procedure provided by sub-section (4) of Section 255 of the Income Tax Act is followed, that a decision of the Tribunal can come into existence. Differing opinions of the members who are equally divided do not individually nor collectively, constitute a decision of the Tribunal unless the mandatory provision of sub-section (4) of Section 255 of the Income Tax Act is followed. Possibly, the Hon'ble Members have missed the distinction between a finding on a given point and the final order. In fact, we are also surprised to note from the order of the learned Judicial Member that the last paragraph of that order in which he concurs with the view of the learned Accountant Member, could never have been the outcome of the findings that the learned Judicial Member had given in the preceding paragraphs 8 to 15. On the contrary, whatever he has found points to an opposite view.

8. We may profitably refer to some observations made by a Division Bench of the Allahabad High Court in the case of J.K. Iron and Steel Company Ltd. Vs. CIT, reported in 49 ITR 304, in which the High Court has cautioned the members as to how they should conduct themselves when there is a difference between them. It was observed that though the members may deliver separate orders though concurring, a Tribunal cannot be distinct from members who constituted. It can express itself only through its members and what is necessary in the case of a court or Tribunal consisting of more than one judge or member is that they should collaborate amongst themselves and bring their minds together in order to judge the matter before them. If they differ, they should not pronounce separate judgements until by "conference and discussion they have endeavoured to arrive at a unanimous judgement". In the present case however, there is a clear provision in law which chalks out the procedure that the members have to adopt when they differ on any point, which falls for the consideration of the Tribunal.

In any event, since we do not have any decision of the Tribunal properly so-called, and since it was incumbent upon the Hon'ble Members to state the points of difference after ascertaining as to what they had actually decided in their respective orders, and follow the procedure prescribed by sub-section (4) of Section 255 of the Income Tax Act, read with Section 24(11) of the Wealth Tax Act, we would refrain from answering any of the questions which have been referred to us. The reference is therefore, returned unanswered.

*/Mohandas